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In re application of :
Russell D. Birkholz : DECISION ON
Serial No. 09/972,124 : PETITION
Filed: October 5, 2001 :
For: WATER CONTACT INDICATOR :

This is a response to the PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR § 1.181 filed by facsimile transmission on March 14, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed February 3, 2005, be withdrawn since the applicant did not receive the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004.

DECISION

Since the petitioner asserts that the applicant did not receive the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004, the request is accepted as a petition under 37 C.F.R. § 1.181 (no fee) and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

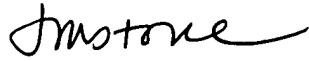
As set forth in MPEP § 711.03(c) - PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION:

"The showing required to establish the nonreceipt of an Office communication **must include a statement from the practitioner** stating that the Office communication was not received by the practitioner and **attesting to the fact that a search of the file jacket** and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement." (emphasis added)

The evidence presented by the petitioner fails to comply with the requirements set forth in MPEP § 711.03(c). The evidence presented is insufficient to establish that the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004 was not received at the correspondence address. The evidence provided includes a statement by the petitioner that the NOTICE OF ALLOWANCE AND FEE(S) DUE mailed September 28, 2004 was not received. Also provided is a copy of the application docket records where the NOTICE OF ALLOWANCE AND FEE(S) DUE would have been posted had it been timely received. The instant petition does not contain a statement attesting that a search of the file jacket was made, and the results of such a search revealed that the office communication was not received as is required by MPEP § 711.03(c).

Therefore, the status of this application remains ABANDONED.

The Petition is **DISMISSED**.

A handwritten signature in black ink, appearing to read "Jstone", written over a horizontal line.

Jacqueline Stone, Director
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